

Syllabus.

for the mouth of the river in the field-notes, show that the survey made in 1821 recognized the entrance of the river into the lake through the sand bar in an almost direct line easterly, disregarding the channel west of the sand bar, where the river most usually flowed before the piers were erected. It is immaterial where the most usual mouth of the river was in 1821; nor whether this northern mouth was occasional, or the flow of the water only temporary at particular times, and this flow produced to some extent by artificial means, by a cut through the bar, leaving the water to wash out an enlarged channel in seasons of freshets. The public had the option to declare the true mouth of the river, for the purposes of a survey and sale of the public land."

So, in the case before us, obviously the surveyors surveyed only to this bayou, and called that the river. The plaintiff has no right to challenge the correctness of their action, or claim that the bayou was not Indian River or a proper water line upon which to bound the lots.

We are of the opinion, therefore, that no substantial error was committed by the Circuit Court, and the judgment is

Affirmed.

WISCONSIN CENTRAL RAILROAD COMPANY v.
FORSYTHE.

ERROR TO THE CIRCUIT COURT OF THE UNITED STATES FOR THE
WESTERN DISTRICT OF WISCONSIN.

No. 238. Argued March 28, 29, 1895. — Decided June 3, 1895.

The land in controversy in this case is within the place limits of the road of the plaintiff in error, and was subject to the full control of Congress at the time of the grant made by § 3 of the act of May 5, 1854, c. 80, 13 Stat. 66, and it passed by operation of that grant, notwithstanding the fact that it was withdrawn by the Land Department in 1856 and 1859, in order to satisfy the grant made by the act of June 3, 1856, c. 43, 11 Stat. 20.

Every act of Congress making a grant of public land is to be treated both

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as a law and a grant, and the intent of Congress, when ascertained, is to control in the interpretation of the law.

When Congress makes a grant of a specific number of sections of public land in aid of any work of internal improvement, it must be assumed that it intends the beneficiary to receive such amount of land; and when it prescribes that those lands shall be alternate sections along the line of the improvement, it is equally clear that the intent is that, if possible, the beneficiary shall receive those particular sections.

The courts are not concluded by a decision of the Land Department on a question of law.

The facts set up by the defendant as an estoppel suggest the rule "*de minimis non curat lex*."

This was an action of ejectment, commenced on April 5, 1890, by the Wisconsin Central Railroad Company against William O. Forsythe in the Circuit Court of the United States for the Western District of Wisconsin, to recover possession of the southwest quarter of section 11, township 47 north, of range 4 west, in the county of Ashland, Wisconsin. At the trial, on April 16, 1891, the court instructed the jury to render a verdict for the defendant. Judgment having been entered on such verdict, the railroad company brought the case here on this writ of error.

The title of the plaintiff rested on these facts: By the act of June 3, 1856, c. 43, 11 Stat. 20, the United States made a grant of land to the State of Wisconsin. The first and fourth sections of the act making the grant were as follows:

"*Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That there be, and is hereby, granted to the State of Wisconsin for the purpose of aiding in the construction of a railroad from Madison, or Columbus, by the way of Portage City to the St. Croix River or Lake between townships twenty-five and thirty-one, and from thence to the west end of Lake Superior; and to Bayfield; and also from Fond du Lac on Lake Winnebago, northerly to the state line, every alternate section of land designated by odd numbers for six sections in width on each side of said roads respectively. But in case it shall appear that the United States have, when the lines or routes of said roads are definitely fixed, sold any sections or parts thereof granted as aforesaid, or that the right of preëmption*

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has attached to the same, then it shall be lawful for any agent or agents, to be appointed by the Governor of said State, to select, subject to the approval of the Secretary of the Interior, from the lands of the United States nearest to the tier of sections above specified, so much land in alternate sections, or parts of sections, as shall be equal to such lands as the United States have sold or otherwise appropriated, or to which the right of preëmption has attached, as aforesaid, which lands (thus selected in lieu of those sold and to which preëmption has attached as aforesaid, together with the sections and parts of sections designated by odd numbers as aforesaid, and appropriated as aforesaid) shall be held by the State of Wisconsin for the use and purpose aforesaid: *Provided*, That the lands to be so located shall in no case be further than fifteen miles from the line of the roads in each case, and selected for and on account of said roads: *Provided further*, That the lands hereby granted shall be exclusively applied in the construction of that road for which it was granted and selected, and shall be disposed of only as the work progresses, and the same shall be applied to no other purpose whatsoever: *And provided further*, That any and all lands reserved to the United States by any act of Congress for the purpose of aiding in any object of internal improvement, or in any manner for any purpose whatsoever, be, and the same are hereby, reserved to the United States from the operation of this act, except so far as it may be found necessary to locate the route of said railroads through such reserved lands, in which case the right of way only shall be granted, subject to the approval of the President of the United States."

"SEC. 4. *And be it further enacted*, That the lands hereby granted to said State shall be disposed of by said State only in manner following, that is to say: That a quantity of land not exceeding one hundred and twenty sections, and included within a continuous length of twenty miles of roads, respectively, may be sold; and when the Governor of said State shall certify to the Secretary of the Interior that any twenty continuous miles of either of said roads are completed, then another like quantity of land hereby granted may be sold;

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and so from time to time until said roads are completed ; and if said roads are not completed within ten years, no further sales shall be made, and the land unsold shall revert to the United States."

We are concerned in this case with only the first of the two lines of road named and shall therefore treat the act as referring to it alone. On June 12, 1856, a withdrawal of the lands deemed necessary for the satisfaction of this grant was made by the land department. The grant was accepted by the State of Wisconsin on October 8, 1856, Laws of Wisconsin, 1856, c. 118, p. 137, and on October 11, 1856, the State conferred the benefit of it upon the La Crosse and Milwaukee Railroad Company, Laws of Wisconsin, 1856, c. 122, p. 217. Under authority of an act, of date March 5, 1857, Laws of Wisconsin, 1857, c. 230, p. 530, the La Crosse and Milwaukee Railroad Company conveyed to the St. Croix and Lake Superior Railroad Company so much of the grant as was north of the St. Croix River or Lake, and was to aid in constructing the road from that point to the west end of Lake Superior and to Bayfield. On March 2, 1858, the St. Croix and Lake Superior Railroad Company filed in the Land Department at Washington its map of definite location of the road from the St. Croix River or Lake to the west end of Lake Superior, and on July 17, 1858, a like map of definite location of the branch to Bayfield. On March 1, 1859, the Commissioner of the General Land Office forwarded to the local land officers a plat showing these locations, together with the six and fifteen-mile limits thereof, and directed them to continue to reserve all vacant tracts outside of the six and within the fifteen-mile limits from sale or location for any purpose whatever. In the letter conveying this direction it was stated that the agent of the State had selected all the vacant lands between the six and fifteen-mile limits in lieu of the lands within the six-mile limits already sold and pre-empted.

Nothing was done towards the construction of the road and branch from the St. Croix River or Lake northward until after the passage by Congress of the act of May 5, 1864, c. 80, 13

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Stat. 66. The first, third, fifth, and sixth sections of this act are as follows :

*“Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That there be, and is hereby, granted to the State of Wisconsin, for the purpose of aiding in the construction of a railroad from a point on the St. Croix River or Lake, between townships twenty-five and thirty-one, to the west end of Lake Superior, and from some point on the line of said railroad, to be selected by said State, to Bayfield, every alternate section of public land designated by odd numbers, for ten sections in width on each side of said road, deducting any and all lands that may have been granted to the State of Wisconsin for the same purpose, by the act of Congress of June three, eighteen hundred and fifty-six, upon the same terms and conditions as are contained in the act granting lands to the State of Wisconsin, to aid in the construction of railroads in said State, approved June three, eighteen hundred and fifty-six. But in case it shall appear that the United States have, when the line of route of said road is definitely fixed, sold, reserved, or otherwise disposed of, any sections or parts thereof, granted as aforesaid, or that the right of preëmption or homestead has attached to the same, then it shall be lawful for any agent or agents, to be appointed by said company, to select, subject to the approval of the Secretary of the Interior, from the public lands of the United States nearest to the tier of sections above specified, as much land in alternate sections or parts of sections, as shall be equal to such lands as the United States have sold or otherwise appropriated, or to which the right of preemption or homestead has attached as aforesaid, which lands (thus selected in lieu of those sold, and to which preëmption or homestead right has attached as aforesaid, together with sections and parts of sections designated by odd numbers as aforesaid, and appropriated as aforesaid) shall be held by said State for the use and purpose aforesaid: *Provided*, That the lands to be so located shall in no case be further than twenty miles from the line of the said roads, nor shall such selection or location be made in lieu of lands received under the said*

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grant of June 3, 1856, but such selection and location may be made for the benefit of said State, and for the purpose aforesaid, to supply any deficiency under the said grant of June third, eighteen hundred and fifty-six, should any such deficiency exist."

"SEC. 3. *And be it further enacted*, That there be, and is hereby, granted to the State of Wisconsin, for the purpose of aiding in the construction of a railroad from Portage City, Berlin, Doty's Island, or Fond du Lac, as said State may determine, in a northwestern direction, to Bayfield, and thence to Superior on Lake Superior, every alternate section of public land, designated by odd numbers, for ten sections in width on each side of said road, upon the same terms and conditions as are contained in the act granting lands to said State to aid in the construction of railroads in said State, approved June three, eighteen hundred and fifty-six. But in case it shall appear that the United States have, when the line or route of said road is definitely fixed, sold, reserved or otherwise disposed of any sections or parts thereof, granted as aforesaid, or that the right of preëmption or homestead has attached to the same, that it shall be lawful for any agent or agents of said State, appointed by the governor thereof, to select, subject to the approval of the Secretary of the Interior, from the lands of the United States nearest to the tier of sections above specified, as much public land in alternate sections or parts of sections as shall be equal to such lands as the United States have sold or otherwise appropriated, or to which the right of preëmption or homestead has attached as aforesaid, which lands (thus selected in lieu of those sold and to which the right of preëmption or homestead has attached as aforesaid, together with sections and parts of sections designated by odd numbers as aforesaid, and appropriated as aforesaid) shall be held by said State, or by the company to which she may transfer the same, for the use and purpose aforesaid: *Provided*, That the lands to be so located shall in no case be further than twenty miles from the line of said road."

"SEC. 5. *And be it further enacted*, That the time fixed and limited for the completion of said roads in the act aforesaid of

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June three, eighteen hundred and fifty-six, be, and the same is hereby, extended to a period of five years from and after the passage of this act.

"SEC. 6. *And be it further enacted*, That any and all lands reserved to the United States by any act of Congress for the purpose of aiding in any object of internal improvement, or in any manner for any purpose whatsoever, and all mineral lands be, and the same are hereby, reserved and excluded from the operation of this act, except so far as it may be found necessary to locate the route of such railroads through such reserved lands, in which case the right of way only shall be granted, subject to the approval of the President of the United States."

On March 20, 1865, Wisconsin conferred upon the St. Croix and Lake Superior Railroad Company the full benefit of the grant made by the first section of this act. Laws of Wisconsin, 1865, c. 175, p. 154. On April 22, 1865, the St. Croix and Lake Superior Railroad Company accepted this grant, and at the same time adopted the definite location theretofore made as shown by the maps on file in the Land Office at Washington. In 1869 the legislature of Wisconsin passed an act, Laws 1869, c. 90, p. 85, repealing said chapter 175 of the laws of 1865, and in 1874, Laws of 1874, c. 126, p. 186, conferred the benefit of the grant on the North Wisconsin Railroad Company, which company afterwards by consolidation became merged in the Chicago, St. Paul, Minneapolis and Omaha Railroad Company (hereafter called the Omaha company). This company constructed, and now owns and operates, the road from St. Croix River or Lake to Superior, on Lake Superior, and also the branch to Bayfield.

The grant made by section three of the act of Congress of 1864, was transferred by the State to the Portage, Winnebago and Lake Superior Railroad Company, whose name was afterwards changed to that of the Wisconsin Central Railroad Company, the plaintiff herein. Laws of Wisconsin, 1866, p. 720, c. 314; c. 362, p. 869; 1869, c. 257, p. 578; 1871, c. 27, p. 42. The map of definite location of the road thus aided was filed on November 10, 1869. Prior to December 31, 1876, the plaintiff had constructed, and now owns and operates, the road as far north

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as Ashland, on Lake Superior. The Bayfield branch of the Omaha road also touches Ashland, and the land in controversy is within ten miles of the plaintiff's road and between ten and fifteen miles of the Omaha road.

On February 12, 1884, the Omaha company and the plaintiff, in consequence of the overlapping of their grants at and near the city of Ashland, entered into an agreement, which provided, among other things: "The Omaha company consents that the Central company [plaintiff] shall take patents for all lands in the overlap lying east of the easterly ten-mile limit of the Bayfield branch of the Omaha company, and north and east of the westerly ten-mile limit of the Central company, and agrees to assist the Central company to get such patents from the State of Wisconsin."

On February 25, 1884, the State of Wisconsin issued to the plaintiff a patent for a large quantity of land, including therein the tract in controversy, and on February 19, 1887, the Omaha company executed a further instrument of release to the plaintiff, by which it surrendered and waived all right of whatsoever nature to any lands east of a line therein described, which was so drawn as to include the lands in dispute. On July 2, 1887, the plaintiff filed in the Land Office at Washington lists of land, including the land in dispute, claiming them as part of its grant. The Commissioner of the General Land Office rejected these lists, holding that the plaintiff had no title to the lands, and, on appeal, the Secretary of the Interior, on January 24, 1890, affirmed this decision. After this the defendant took proceedings to enter the land under the laws of the United States, went into possession, built a residence, and made certain improvements, at an expense of more than \$200.

Mr. Louis D. Brandeis for plaintiff in error. *Mr. Edwin H. Abbot*, *Mr. Howard Morris*, and *Mr. William H. Dunbar* were on his brief.

Mr. William F. Vilas, by leave of court, for plaintiff in error.

Mr. George G. Greene and *Mr. A. B. Browne* for defendant in error.

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MR. JUSTICE BREWER, after stating the case, delivered the opinion of the court.

The land in controversy is within the place limits of the plaintiff's road. Confessedly, therefore, the title passed to the plaintiff, provided the land was subject to the operation of the grant made by the third section of the act of 1864. The contention is that it was not subject thereto by reason of the fact that it was withdrawn by the land department in 1856 and 1859 in order to satisfy the grant made by the act of 1856. It was within the indemnity and not within the place limits of the grant in aid of the Bayfield road.

It is curious to note that in the communication made in 1859 by the land department to the local land officers it is stated that all the unsold lands within the indemnity limits along the line of that road had been selected by the agent of the State in lieu of the lands sold and preëmpted within the place limits. If this selection was in fact made and was needed to satisfy the deficiency in the amount of lands within the place limits, and was approved by the land department, it would avoid the necessity for further inquiry; for whatever of right there was in the St. Croix and Lake Superior Railroad Company passed to the Omaha Company, and was by it, under the agreements of February 12, 1884, and February 19, 1887, transferred to the plaintiff, and this was long anterior to any claim on the part of the defendant.

But assuming, in the absence of any direct evidence thereof, that no such selection was made, we pass to an inquiry as to the respective rights of the parties. The title of the plaintiff, as we have seen, can only be defeated by reason of the land not being within the scope of the grant made by the third section of the act of 1864, and it is only excluded therefrom by the grant of 1856 and the reservation made in pursuance thereof. The reliance of defendant is on the long-established rule, often affirmed by this court and recognized in section six of the act of 1864, to the effect that a grant by Congress does not operate upon lands theretofore reserved for any purpose whatsoever. There can be no doubt as to this rule, or as to

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the fact that lands withdrawn from sale by the land department are considered as reserved within its terms.

But it is a rule of equal if not higher significance that every act of Congress making a grant is to be treated both as a law and a grant, and the intent of Congress, when ascertained, is to control in the interpretation of the law.

"The solution of these questions depends, of course, upon the construction given to the acts making the grants; and they are to receive such a construction as will carry out the intent of Congress, however difficult it might be to give full effect to the language used if the grants were by instruments of private conveyance. To ascertain that intent we must look to the condition of the country when the acts were passed, as well as to the purpose declared on their face, and read all parts of them together." *Winona & St. Peter Railroad v. Barney*, 113 U. S. 618, 625. See also *Missouri, Kansas & Texas Railway v. Kansas Pacific Railway*, 97 U. S. 491, 497; *United States v. Southern Pacific Railroad*, 146 U. S. 570, 597; *United States v. Denver & Rio Grande Railway*, 150 U. S. 1.

In order to determine the intent of Congress we must look at the situation at the time the act of 1864 was passed. The alternate sections within the six and fifteen-mile limits of the Bayfield road were not granted by the act of 1856. They were simply withdrawn from preëmption and sale by the action of the land department in order that the beneficiary of the grant might, in case the full amount of lands granted was not found within the place limits, select therefrom enough to supply the deficiency. We do not mean that they were not reserved lands; on the contrary, as stated above, they were. Such is the uniform ruling of this court in interpreting like action on the part of the land department. Nevertheless, not being granted lands, they were still within the disposing power of Congress. There would be no question of the title of one to whom Congress had in terms granted them. "Until selection was made the title remained in the government, subject to its disposal at its pleasure." *Kansas Pacific Railroad v. Atchison &c. Railroad*, 112 U. S. 414, 421; *St. Paul & Sioux City Railroad v. Winona & St. Peter Railroad*, 112 U. S. 720,

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732; *United States v. McLaughlin*, 127 U. S. 428, 450, 455; *Wisconsin Central Railroad v. Price County*, 133 U. S. 496, 511; *United States v. Missouri, Kansas & Texas Railway*, 141 U. S. 358, 374.

The land was, therefore, subject to the full control of Congress at the time of the passage of the act of 1864. What did Congress intend by that act? It had in 1856 granted to the State of Wisconsin six sections per mile to aid it in the construction of a road from Madison or Columbus, by way of Portage City, to the St. Croix River or Lake, and thence to the west end of Lake Superior, and to Bayfield, with a proviso that if the road was not completed within ten years the unsold lands should revert to the United States. Wisconsin had accepted this grant, and thus impliedly undertaken to construct the road. It made the La Crosse and Milwaukee Railroad Company the beneficiary of this grant. Subsequently, with the assent of the State, that company had transferred to the St. Croix and Lake Superior Railroad Company so much of the grant as was designed to aid in the construction of that part of the road from the St. Croix River or Lake northward to Lake Superior, with the branch to Bayfield. Eight years had passed, and only two years more remained until the expiration of the time fixed for the completion of the road. Only a short distance had in fact been built, to wit, 61 miles from Portage to Tomah, and that by the St. Croix and Milwaukee company in the spring of 1858. It was evident that the inducement of six sections per mile had not been sufficient to secure the construction of the road in the comparatively uninhabited portions in the northwestern part of the State, and so Congress determined to enlarge its grant in order to secure the accomplishment of the desired end. At the same time it perceived that the public interests required an additional road running through the central portion of the State northward to the two termini on Lake Superior, named for the road from St. Croix Lake or River.

And so it passed the act of 1864. This made a grant to the same grantee, to wit, the State of Wisconsin, but expressed the terms and purposes in three separate sections.

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Congress evidently knew that at the time two companies had been named by the State of Wisconsin as the parties to construct the road provided for by the act of 1856. So, in the first section, it made a grant of ten sections per mile to aid in the construction of a road from St. Croix River or Lake to the west end of Lake Superior, with a branch to Bayfield; in the second, a grant in substantially like terms for a road from Tomah to the St. Croix River or Lake; and in the third, a grant also of ten sections per mile to aid in the construction of a road from Portage City, Berlin, Doty's Island, or Fond du Lac, as the State should determine, in a northwesterly direction to Bayfield, and then to Superior, on Lake Superior. In each of these three sections it named the State of Wisconsin as the grantee. Although it knew that the State had made two separate companies the beneficiaries of the act of 1856, it made no grant to those companies. It dealt in all three sections with the State, relying upon the State as the party to see that the roads were completed, and to use its own judgment as to the manner of securing such construction. The act of 1864 was, therefore, a mere enlargement of the act of 1856, was made to the same grantee, was *in pari materia*, and is to be construed accordingly. It is not to be treated as an independent grant to a different party, and, therefore, liable to come in conflict with the rights of the first grantee.

For whose benefit was the withdrawal of the lands within the indemnity limits of the Bayfield road made? Obviously, as often declared, for the benefit of the grantee. It is as though the United States had said to the grantee: we do not know whether, along the line of road, when you finally locate it, there will be six alternate sections free from any preëmption or other claim, and, therefore, so situated that you may take title thereto, and so we will hold from sale or disposal to any one else an additional territory of nine miles on either side that within those nine miles you may select whatever lands may be necessary to make the full quota of six sections per mile. When Congress, by a subsequent act, makes a new and absolute grant to the same

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grantee of lands thus held by the government for the benefit of such grantee, upon what reasoning can it be said that such grant does not operate upon those lands?

Kansas City &c. Railroad v. Attorney General, 118 U. S. 682, is in point. On July 26, 1866, 14 Stat. 289, Congress passed an act granting to the State of Kansas five alternate sections per mile to aid the Union Pacific Railroad Company, Southern Branch, in constructing a railroad from Fort Riley, upon the valley of the Neosho River, to the southern line of the State of Kansas. This corporation (its name having been changed to that of the Missouri, Kansas and Texas Railroad Company) constructed the road, and received patents for the land. The object of that suit was to vacate and declare void these patents, and the principal ground relied on for maintaining it was that, by an act of March 3, 1863, 12 Stat. 772, and a supplemental act of July 1, 1864, 13 Stat. 339, the lands had been appropriated to aid another company in building a road along the same line. The act of 1866 had the ordinary reservation clause, similar to that found in section six of the act of 1864 before us, and the contention was that the effect of this reserving clause was to except all the lands covered by the grants of 1863 and 1864 from the operation of the grant of 1866. It was conceded that if the intent of Congress was to aid in the construction of two separate lines of road the contention would have to be sustained, the court saying: "As the lands granted by the prior acts of 1863 and 1864 had, by the act of the legislature of Kansas, been granted to the Atchison, Topeka and Santa Fé Railroad Company, a then existing corporation of that State, for the purpose of building a road, with the same general description as to its course down the valley of the Neosho River, which might have run through these same lands if it had been built by the latter company, it is argued with great earnestness that these lands were necessarily reserved, under this clause of the act of 1866, from the grant, as being reserved by the authority of Congress for the purpose of aiding in that object of internal improvement. If the A., T. & S. F. R. R. Co. had built a line of road along the same general course and through the same lands, twenty miles

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in width, that the M., K. & T. R. R. Co. has occupied with its road, and asserted a claim to these lands, or to any of them, the argument would be almost irresistible." But it was held, in view of certain arrangements made between the two companies, (not then ratified by the State of Kansas, but expected to be, and, in fact, subsequently so ratified,) that it was the intent of Congress simply to aid in the construction of one road, and that the Missouri, Kansas and Texas Railroad Company was entitled to the full benefit of the three acts. The court thus looked beyond the letter of the statutes to the intent of Congress, and upon that intent denied what would otherwise be a technical ground for relief.

But we need not go outside of this act of 1864 for a clear disclosure of a like intent on the part of Congress. The act of 1856 granted six sections per mile to aid in the construction of a road from St. Croix River or Lake to Bayfield. The lands between the six and fifteen-mile limits of the line of that road as located were withdrawn by the action of the land department. They were thus reserved lands. Now the first section of the act of 1864 granted ten alternate sections to aid in the construction of a road along the same line. Can there be any doubt that this grant of four additional sections operated upon the land thus reserved between the six and fifteen-mile limits? Yet if the act of 1864 is to be taken as making a grant entirely independent from that of 1856, it could not be enforced as to lands between the six and fifteen-mile limits reserved under that prior grant. It will be noticed that the act of 1864 makes no grant directly to the St. Croix and Lake Superior Railroad Company, but only to the State of Wisconsin, and the latter could, if it had seen fit, have made some other company the beneficiary; and yet can there be any doubt that Congress intended by this first section of the act of 1864 merely an enlargement of the grant made by the act of 1856 from six to ten sections, and also intended that as to the four extra sections the grant should operate upon lands reserved between the six and fifteen-mile limits? If this be true as to one part of the grant of 1864, why is it not equally true as to another portion of the grant, all of it being to the same grantee?

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When Congress makes a grant of a specific number of sections in aid of any work of internal improvement, it must be assumed that it intends the beneficiary to receive such amount of land, and when it prescribes that those lands shall be alternate sections along the line of the improvement, it is equally clear that the intent is that if possible the beneficiary shall receive those particular sections. So far as railroads are concerned, it is the thought not merely that the general welfare will be subserved by the construction of the road along the lines indicated, but further, that such grant shall not be attended with any pecuniary loss to the United States; for the universal rule is to double the price of even sections within the granted limits. The expectation is that the company receiving the odd sections will take pains to dispose of them to settlers, and thus by their settlement and improvement increase the value of the even sections adjoining and so justify the added price. To fully realize this expected benefit it is essential that the lands taken by the company shall be as near to the line of the road as possible; and so, while selection of remote lands is permitted, it is only when and because there is a necessity of such selection to make good the amount of the grant. Obviously, therefore, an act must be construed to realize, so far as is possible, this intent and to accomplish the desired result.

Still, again, it must be noticed that the State of Wisconsin, the grantee named in both the acts of 1856 and 1864, the plaintiff within whose place limits the land in controversy is situated, and the Omaha company, within whose indemnity limits it is, all three long since agreed that the land passed by this grant, and dealt with it as belonging to the plaintiff. Both roads have been constructed, and, undoubtedly largely through the instrumentality of their construction, population has poured into that part of the State, and the value of all real estate so increased that this particular tract is found by the jury to be worth \$8000. After years have passed, and all the parties interested in the matter, other than the United States, have treated it as the property of the plaintiff, the defendant, relying upon a technical construction of the statutes,

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seeks to enter the tract, and thus, for no more than the paltry sum of \$400, two dollars and a half per acre being the double minimum price of land within the limits of railroad grants, to obtain title to property worth, as we have seen, at least \$8000. The railroad company, under this construction, loses the land it supposed it was entitled to, which it has treated as its own, and has helped to make valuable; the government does not receive the \$8000, nor indeed anything if the land be entered under the homestead laws, but a stranger comes in, who has done nothing to create that value, and appropriates it to his own benefit. The iniquity of such a result is at least suggestive.

But further, it is urged that this question of title has been determined in the land department adversely to the claim of the plaintiff. This is doubtless true, but it was so determined, not upon any question of fact, but upon a construction of the law; and such matter, as we have repeatedly held, is not concluded by the decision of the land department. *Johnson v. Towsley*, 13 Wall. 72; *Shepley v. Cowan*, 91 U. S. 330; *Quinby v. Conlan*, 104 U. S. 420; *Doolan v. Carr*, 125 U. S. 618, 624; *Lake Superior Ship Canal &c. Co. v. Cunningham*, 155 U. S. 354.

Defendant also claims an estoppel by reason of these facts set up as a third defence in his answer, the truth of which was on the trial admitted by the plaintiff. The final decision of the Secretary adversely to the claim of the plaintiff was on or about the 10th day of January, 1890. (The testimony in this case shows that it was made on January 24, 1890.) Subsequent to that decision the defendant entered upon the premises, built a residence, and made other improvements, at a cost of more than \$200. The plaintiff knew of his possession and of the making of such improvements, but took no action until the commencement of this suit, on April 9, 1890. It seems to us that the claim of an estoppel can hardly be seriously made. The plaintiff had been contesting for these lands in the land department for a series of years. Some time after the final decision therein the defendant enters upon the land and commences making improvements, and in making such improve-

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ments expends the paltry sum of \$200, and the plaintiff fails to file a complaint in ejectment for two months and a half after the decision of the land department, and perhaps, nearly that time after the defendant had entered into possession. Surely the defendant had no reason to believe that the plaintiff had abandoned its claim to the land. Both the time of plaintiff's delay and the amount of his expenditures suggest the rule *de minimis non curat lex*. The title of \$8800 worth of land is not lost in such a way.

For these reasons we are of the opinion that the Circuit Court erred in its decision, and its judgment is, therefore,
Reversed, and a new trial ordered.

MR. JUSTICE HARLAN dissented.

The CHIEF JUSTICE took no part in the consideration and decision of this case.

SPENCER v. McDUGAL.

ERROR TO THE CIRCUIT COURT OF THE UNITED STATES FOR THE
WESTERN DISTRICT OF WISCONSIN.

No. 245. Argued April 3, 1895. — Decided June 3, 1895.

By the order of the Commissioner of the General Land Office of June 12, 1856, the land in controversy in this case was withdrawn from preëmption or sale; and the validity of that order was not affected by the fact that the order covered more land than was included in the grant by Congress which caused its issue.

THE case is stated in the opinion.

Mr. Louis D. Brandeis for plaintiff in error. *Mr. Edwin H. Abbot*, *Mr. Howard Morris*, and *Mr. William H. Dunbar* were on his brief.

Mr. George G. Greene and *Mr. A. B. Browne* for defendant in error.